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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)

Cellular Service and Other Commercial)
Mobile Radio Services in the Gulf of)
Mexico)

WT Docket No. 97-112 ✓

Amendment of Part 22 of the Commission's)
Rules to Provide for Filing and Processing)
of Applications for Unserved Areas in the)
Cellular Service and to Modify Other)
Cellular Rules)

CC Docket No. 90-6

SECOND FURTHER NOTICE OF PROPOSED RULE MAKING**Adopted:** March 28, 1997**Released:** April 16, 1997**By the Commission:**

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Second Further Notice of Proposed Rule Making*, we reexamine our cellular service rules as they apply to the Gulf of Mexico Service Area (GMSA).¹ We also propose licensing and service rules for operations in the Gulf by other CMRS providers, including Personal Communications Service (PCS) and Specialized Mobile Radio (SMR).

2. Over the past decade, conflict has arisen between the land-based and water-based cellular carriers in the Gulf region over which carriers should provide service to coastal areas. In addition, the United States Court of Appeals for the District of Columbia Circuit has instructed us to reexamine certain of our cellular licensing policies insofar as they apply to GMSA licensees.² We believe that, as a result of these factors and other changed circumstances, a review of our current licensing policies in the Gulf region is warranted. Our principal goals in this proceeding are (1) to establish a comprehensive regulatory scheme that will reduce conflict between water-based and land-based carriers, (2) to provide regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites, and (3) to award licenses to serve well-travelled coastal areas to those carriers that value the spectrum most highly and will maximize its use to provide the best quality of service to the public.

3. To achieve these objectives, we propose to divide the GMSA into two cellular service areas: a GMSA Coastal Zone and a GMSA Exclusive Zone. The proposed Coastal Zone would consist of the portion of the GMSA extending from the coastline of the Gulf of Mexico to the 12-mile offshore limit. The proposed Exclusive Zone would extend from the 12-mile limit to the southern limits of the GMSA. In the Coastal Zone, we propose to apply our Phase II unserved area licensing rules as adopted in the *Ninth Report and Order* in PP Docket No. 93-253. Thus, any qualified applicant would be permitted to apply for sites within the Coastal Zone, and all mutually exclusive applications would be subject to competitive bidding procedures.³ In the Exclusive Zone, we propose to allow the two existing Gulf carriers to move their transmitters freely and modify or expand their service areas without facing competing applications. We seek comment on whether these reforms will accomplish our stated objectives.

4. To facilitate licensing under our revised regulatory scheme, we propose to dismiss without prejudice all currently pending Phase II applications to serve the GMSA, which were placed on hold after the Court of Appeals directed us to reexamine our policies in the Gulf.⁴ In addition, we propose to dismiss all pending applications for *de minimis* extensions into the GMSA. Under the proposed new rules, we would then accept Phase II filings to serve unserved

¹ 47 C.F.R. § 22.909(a) (1994).

² *Petroleum Comms., Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994) (*Petrocom*).

³ See 47 C.F.R. § 22.949(a)(2) (1995); 47 C.F.R. §§ 1.2101-.2111 (1995).

⁴ *Petroleum Comms.*, 22 F.3d at 1173.

areas within the Coastal Zone of the GMSA. We seek comment on our proposal and any alternatives.

II. BACKGROUND

5. Because of the GMSA's unique characteristics (*e.g.*, it is the only cellular market that consists entirely of a body of water), it has been regulated differently from other cellular service areas.⁵ To facilitate understanding of the GMSA's unusual history, we provide the following overview of the proceedings that established our policies in the Gulf. We also review the *PetroCom* decision insofar as it applies to the issues raised in this proceeding.

A. Cellular Service in the Gulf

6. When we adopted initial rules governing the commercial implementation of cellular radio telephone service in 1981, we did not address the possibility of authorizing cellular systems in offshore areas.⁶ In 1982, Petroleum Communications, Inc. (*PetroCom*) filed an application requesting authority to operate a developmental cellular system in the Gulf. In its application, *PetroCom* proposed to install a cellular system using satellite circuits as system links to serve fixed and temporary fixed platforms, drilling rigs, mobile units aboard vessels, and portable units in the Gulf area.⁷ On November 10, 1982, we requested comment on *PetroCom*'s application. We received sixteen comments in response to our request.

7. 1983 *PetroCom* Order. On October 7, 1983, we issued a *Memorandum Opinion and Order* (1983 *PetroCom* Order), which provided for the licensing of two carriers to provide offshore commercial cellular service in the Gulf.⁸ We subsequently decided to license two Gulf systems and directed *PetroCom* to amend its developmental application to conform with the cellular rules for commercial service.⁹ Because we believed that Gulf systems operating in

⁵ See 47 C.F.R. § 22.951 (1995) and 47 C.F.R. § 22.911 (1995).

⁶ *Cellular Communications Systems (Cellular Systems)*, 86 F.C.C.2d 469 (1981), modified, 89 F.C.C.2d 58 (1982), further modified, 90 F.C.C. 2d 571(1982), petition for review dismissed sub nom. *United States v. FCC* No. 82-1526 (D.C. Cir. 1983). At that time, the country was divided into geographic areas -- 305 Metropolitan Statistical Areas (MSAs). *In re Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules*, CC Docket 90-6, Notice of Proposed Rule Making, 5 FCC Rcd. 1004, 1047, ¶ 18 (1990) (*Unserved Area Notice of Proposed Rule Making*).

⁷ *In re application of Petroleum Comms., Inc. to construct a Developmental Cellular Radio Telephone System in the Gulf of Mexico*, *Memorandum Opinion and Order*, 54 Rad. Reg. 2d (P&F) 1020, 1021, ¶ 1 (1983).

⁸ *Id.* at 1024 ¶¶ 12-15.

⁹ *Id.* at 1028 ¶ 30. We also gave other applicants 90 days to file applications. On February 8, 1984, we issued a public notice accepting applications from *PetroCom*, Gulf Cellular, and Gulf Star. Gulf Cellular and Gulf Star subsequently formed a joint venture, and updated their application to reflect the newly-formed entity. *In re applications of Petroleum Comms., Inc. for New Domestic Cellular Radio Telecommunications Service Systems in*

coastal areas would cause interference to land-based systems, we stated that Gulf licensees would be required to design their systems to avoid significant overlap of reliable service-area contours with land-based systems.¹⁰ We recognized that this condition might preclude Gulf carriers from being able to place transmitters on shore or, at a minimum, might require that Gulf carriers use only carefully placed directional antennas when placing transmitters on land.¹¹

1. The Land-Based Transmitter Controversy

8. Ever since the Gulf carriers received their licenses, they have sought permission to place their transmitters on land without having to obtain consent from land-based carriers. Because the disputes that arose over this issue occurred between individual land-based carriers and water-based carriers, we have resolved them primarily through the adjudicatory process rather than by a formal rulemaking proceeding. In Section, III (C)(4) *infra*, we reexamine our policy on this issue.

9. 1984 PetroCom Order on Reconsideration. Gulf Central International, Inc. (Gulf Central) filed a petition for reconsideration of our *1983 PetroCom Order* arguing, *inter alia*, that PetroCom's application was defective, because its proposed cell sites would impermissibly intrude upon seven MSAs. In the *1984 PetroCom Order on Reconsideration*, we rejected Gulf Central's argument, because transmitter contours are permitted to extend into neighboring MSAs if they are considered *de minimis* extensions.¹² We stated that, at the most, we would require PetroCom to re-engineer its proposal if we found that the incursions into neighboring MSAs were not justified.¹³ We also clarified that our decision in the *1983 PetroCom Order* permitted Gulf carriers to erect land-based transmitting facilities, provided that they minimize interference with land-based systems.¹⁴ We reasoned that water-based carriers should be permitted to erect land-based transmitters, because they facilitate coverage of coastal areas, particularly in places where the coast consists of swamps.¹⁵ In addition, land-based transmitters are less expensive for Gulf

the Gulf of Mexico, CC Bureau, *Memorandum Opinion and Order*, File No. 30003-CL-P-84 at n.4 (1985) (*1985 CCB Order*), affirmed by *Order on Reconsideration*, 1 FCC Rcd. 511 (1986) (*1986 Unserved Area Order*).

¹⁰ Petroleum Comms., 54 Rad. Reg. 2d (P&F) at 1025 n.20.

¹¹ *Id.*

¹² *In re applications of Petroleum Comms., Inc. and Gulf Star Comms., Inc., and Fluor Engineers, Inc., for authority to construct Cellular Radio Telecommunications Systems in the Gulf of Mexico*, *Memorandum Opinion and Order on Reconsideration*, 56 Rad. Reg. 2d (P&F) 1651, 1657, ¶ 13 (1984).

¹³ *Id.* at n. 16.

¹⁴ *Id.*

¹⁵ *Id.*

carriers to operate and maintain, and they provide a less expensive interconnect with adjacent wireline systems.¹⁶

10. 1985 CCB Order. On August 14, 1985, the Common Carrier Bureau granted PetroCom's application for frequency block A and Gulf Cellular's application for frequency block B and, at the same time, established a service area boundary for the new GMSA licensees. The boundary of the GMSA (which is treated like an MSA for administrative purposes) is defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."¹⁷ Thus, all inland areas are excluded from the GMSA. As a corollary to establishing the GMSA, the Common Carrier Bureau ruled that Gulf carriers may not place transmitters outside of the GMSA (*i.e.*, on land areas inside of the coastline) and, to the extent that water-based carriers had already constructed transmitters on land, such transmitters would be permitted on an interim basis only.¹⁸

11. 1986 Order on Reconsideration.¹⁹ PetroCom and Gulf Cellular both filed petitions for reconsideration of the *1985 CCB Order*, arguing that harbors and bays should be included in the GMSA so that Gulf carriers could provide continuous service to vessels in transit from their ports to the open water areas.²⁰ In addition, PetroCom requested permission to comply with the *1984 PetroCom Order on Reconsideration* (which allowed water-based carriers to retain land-based transmitters if they are engineered to minimize interference with land-based carriers), rather than comply with the *1985 CCB Order* (which required removal of such transmitters). Upon reconsideration, we affirmed the Common Carrier Bureau's finding that, in order to remain consistent with the Commission's existing regulations and policies concerning the protection of adjoining licensees' service areas, Gulf carriers should not be permitted to place transmitters on land without the land-based carrier's consent. We also stated that GMSA licensees could, if they

¹⁶ *Id.*

¹⁷ *Petroleum Comms.*, 22 F.3d at 1168 n.3. Accordingly, all harbors and bays along the Texas, Louisiana, Alabama, Mississippi, and Florida coasts and the islands along the circumference of the Gulf, including the Chandeleur Islands and those surrounding the Mississippi Sound, are considered on the inland side of the coastline and therefore are not included as part of the GMSA.

¹⁸ *In Re Applications of Petroleum Comms., Inc., and Gulf Cellular Associates for New Domestic Cellular Radio Telecommunications Service Systems in the Gulf of Mexico, Memorandum Opinion and Order*, File No. 30003-CL-P-84, Mimeo No. 6337, (1985)(*1985 CCB Order*) at ¶ 23.

¹⁹ *In re applications of Petroleum Comms., Inc., and Gulf Cellular for New Domestic Cellular Radio Telecommunications Service Systems in the Gulf of Mexico*, File No. 30003-CL-P-84, *Order on Reconsideration*, 1 FCC Rcd. 511 (1986) (*1986 Unserved Area Order*).

²⁰ *Id.* at 512, ¶ 6.

wished, apply to become licensees in any remaining MSAs or RSAs for which they qualified, or enter into regional cellular service agreements with land-based systems.²¹

12. 1987 Order on Reconsideration. PetroCom filed a petition for reconsideration of our 1986 *Order on Reconsideration*, again requesting that we grant Gulf carriers the authority to use onshore sites until land-based carriers are licensed for those areas.²² PetroCom argued, *inter alia*, that reversal of our earlier decision in the 1984 *PetroCom Order on Reconsideration* (which allowed onshore sites under limited circumstances) had jeopardized its ability to provide offshore service. In response, we stated that Gulf operators have always been required to minimize interference with land-based systems and that they had never been guaranteed the right to use land-based sites.²³ We also noted that, at the time we issued earlier orders concerning cellular service in the Gulf, we had not fully considered potential RSA licensees and the impact that land-based transmitters operated by Gulf carriers would have on them.²⁴ After considering the record, we concluded that land transmitters could not be "reengineered" in the Gulf area to avoid significant incursions over land and, therefore, we could not permit Gulf operators to operate land-based transmitters without the land-based carriers' consent.²⁵ The Gulf carriers claimed that no land-based carrier will allow them to construct transmitters on land, so the consent requirement is tantamount to prohibiting all Gulf carriers from ever operating a land-based transmitter.²⁶

2. Gulf Carriers' CGSA

13. Initially, like all MSA and RSA licenses, the Gulf carriers were permitted to specify a protected service area (known as a Cellular Geographic Service Area or CGSA), with the maximum CGSA being the entire market, which in this case was the entire GMSA.²⁷ In general, we treated the GMSA like other MSAs, except that the Gulf carriers were exempt from the requirement imposed on other licensees to provide 39 dBu contour coverage to at least 75% of

²¹ *Id.* at 513, ¶ 18; *In re Applications of Petroleum Comms., Inc. and Gulf Cellular for New Domestic Radio Telecommunications Service Systems in the Gulf of Mexico*, File No. 30003-CL-P-84, *Order on Reconsideration*, 2 FCC Rcd. 3695, 3697 (1987) (*1987 Unserved Area Order*).

²² *1987 Unserved Area Order*, 2 FCC Rcd. at 3695, ¶ 2.

²³ *Id.* at 3696 ¶ 12.

²⁴ *Id.* at 3696 ¶ 11.

²⁵ *Id.* at 3696 ¶ 13; n. 4.

²⁶ *See, e.g.*, Comments of RVC Services, Inc., to the *Further Notice of Proposed Rule Making*, CC Docket 90-6, p.3 (January 16, 1992) ("[g]iven the total failure of land-based operators to cooperate with the GMSA licensees as to extensions on land, [the consent requirement] has resulted in an absolute prohibition against land-based transmitters").

²⁷ *1986 Unserved Area Order*, 1 FCC Rcd. at 516 n.4.

their protected service areas.²⁸ We exempted them from this requirement because of the unique challenges of providing service in the Gulf, including such factors as the lack of permanent population centers in the Gulf, the different propagation characteristics over water versus land, and the Gulf carriers' inability to construct onshore cell sites.²⁹ In the notice and comment period to the Docket 90-6 rulemaking, PetroCom proposed to designate the entire Gulf of Mexico region as its CGSA.³⁰

B. Rules Governing Unserved Areas

14. As cellular service became more popular, we determined that it was not in the public interest to permit a licensee to protect unserved territory for an unlimited period of time simply because the territory has been designated as part of a CGSA.³¹ We reasoned that, if some other carrier desires to serve such an area and the current licensee does not, the new carrier should be given an opportunity to serve customers in that unserved area.³² In 1990, we initiated a rulemaking proceeding, CC Docket No. 90-6, to adopt rules governing the filing and processing

²⁸ *Unserved Area Notice of Proposed Rule Making*, 5 FCC Rcd. at 1063 n.1; see also *Petroleum Comms.*, 54 Rad. Reg. 2d (P&F) at 1028 n. 23 (stating that the Commission "will not require [GMSA carriers] to comply with § 22.903(a) of our rules regarding 75% coverage of the total Cellular Geographic Service Area"). The CGSA was the area defined by the licensee as the area it intended to serve. Applicants were required to identify the 39 dBu contour or contours within their CGSAs and within which the applicant would provide reliable cellular service. In addition, licensees were afforded a five year period from the date of their authorization to expand their CGSAs within their MSA/RSA boundaries without facing competing applications. After that five year period expires, any portions of the MSA/RSA that were not applied for as part of the licensee's CGSA are made available for filing by any applicant (including the initial licensee) seeking to serve these unserved areas. See *Second Report and Order*, CC Docket 85-388, 2 FCC Rcd. 2306 (1987), modified, *Order on Reconsideration of Second Report and Order*, CC Docket 85-388, 4 FCC Rcd. 5377, 5379-5380 (1989); *Rules for Rural Cellular Service (Fifth Report and Order)*, CC Docket 85-388, 3 FCC Rcd. 6401 (1988).

²⁹ *In re Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules*, CC Docket 90-6, *Further Notice of Proposed Rule Making*, 6 FCC Rcd. 6158, 6159, ¶ 11 (1991) (*Unserved Area Further Notice*).

³⁰ PetroCom and RVC Services, Inc. d/b/a Coastel Communications Co. (Coastel) are existing licensees in the GMSA whose CGSAs were defined to encompass the western half of the Gulf of Mexico and the entire Gulf of Mexico, respectively. *Petroleum Comms.*, 22 F.3d at 1168. We rejected PetroCom's proposal to designate the entire Gulf of Mexico region as its CGSA in the *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183, 7191 n.8 (1992) ("*Third Report and Order*"), and instead chose to limit Gulf CGSAs to areas of actual reliable services. On petition for review, the D.C. Circuit found that the Commission had abused its discretion in defining Gulf cellular regions by "fixed rather than flexible boundaries," and accordingly remanded the issue back to the Commission. *Petroleum Comms.*, 22 F.3d at 1171-1173.

³¹ *Unserved Area Notice of Proposed Rule Making*, 5 FCC Rcd. at 1048, ¶ 24.

³² *Id.*

of unserved area applications.³³ The following summary provides an overview of the applicability of these rules to the GMSA.

15. Unserved Area Notice of Proposed Rule Making. In the *Unserved Area NPRM*, we proposed, *inter alia*, that the protected service area of all cellular licensees should be made coterminous with the boundaries of their reliable service area (39 dBu contour). After a five-year expansion period has expired, areas outside of a licensee's newly defined protected service area would be made available for licensing to unserved area applicants, including the initial licensee.³⁴ We proposed to apply the same rules to the GMSA.³⁵

16. Commenters responding to the *Unserved Area NPRM* overwhelmingly objected to the proposed use of the 39 dBu contour as the basis for defining the protected service area of cellular systems.³⁶ They contended that redefining their CGSAs as coterminous with their 39 dBu contours would underestimate the area actually served by licensees and would create substantial interference problems between contiguous cellular systems. Several commenting parties also raised issues with respect to how our proposal would apply to water areas, because propagation characteristics over water are different than over land.³⁷

17. Unserved Area Further Notice of Proposed Rule Making. After considering the comments filed in response to the *Unserved Area NPRM*, we issued the *Unserved Area Further Notice*, proposing to establish the boundary of cellular licensees' protected service areas based on a mathematical formula that would more closely approximate the actual extent of reliable service.³⁸ We also reiterated that, as with other cellular licensees, Gulf licensees should be required to make their CGSAs coterminous with their reliable service areas, but that a different mathematical formula should be used to define their CGSA to take into account the different propagation characteristics over large bodies of water. We invited comments on the proposed

³³ *Unserved Area Further Notice*, 6 FCC Rcd. at 6158, ¶ 3. In a separate order released on the same day, we adopted rules for the filing, processing and selection of applications for unserved areas. *In re Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules, First Report and Order and Memorandum Opinion and Order on Reconsideration*, CC Docket 90-6, 6 FCC Rcd. 6185 (1991) (*Unserved Area First Report and Order*), modified, *Third Report and Order*, 7 FCC Rcd. 7183 (1992) (*Unserved Area Third Report and Order*). Those rules are not at issue in the instant proceeding.

³⁴ *Unserved Area Notice of Proposed Rule Making*, 5 FCC Rcd. at 1047, ¶ 21..

³⁵ *Id.* at 1064 n. 20.

³⁶ *Unserved Area Further Notice*, 6 FCC Rcd. at 6158, ¶ 3.

³⁷ *Id.* at 6159 ¶ 11.

³⁸ *Id.* at ¶ 9.

formula or any other method that would establish "a realistic estimate of actual reliable service coverage, keeping in mind that the methodology should be simple, objective and consistent."³⁹

18. RVC Services, Inc. d/b/a Coastel Communications Co. (Coastel) supported our proposal to make the CGSAs of all cellular licensees coterminous with their reliable service area, provided that the Gulf carriers' CGSAs are determined by a formula that accurately reflects reliable coverage.⁴⁰ Coastel also urged us to reconsider whether extensions by land-based carriers into the GMSA would qualify as *de minimis* if a more accurate Gulf coverage standard were applied.⁴¹ In addition, Coastel requested that we revisit our policy not to allow Gulf carriers to place transmitters on land without the consent of the land-based licensee.⁴²

19. PetroCom, on the other hand, opposed redefining the protected service areas of Gulf licensees to be coterminous with the area in which they actually provided reliable service, and instead argued that Gulf carriers' CGSAs should be coterminous with the GMSA. PetroCom stated that it desired to serve unserved areas in the Gulf, but had been precluded from doing so because of the absence of production platforms and the inability to construct onshore cell sites.⁴³ PetroCom therefore requested that we initiate a separate rulemaking proceeding to revisit the restriction on onshore construction and to defer the requirement that Gulf carriers make their CGSA coterminous with their reliable service area until the final rules are adopted in that proceeding. PetroCom also emphasized that if its CGSA were reduced to reflect actual service, we should modify the proposed formula to take into account the study PetroCom had submitted of propagation characteristics in the Gulf.⁴⁴ Finally, PetroCom argued that, at a minimum, an ambulatory CGSA definition should be adopted because of the transitory nature of Gulf sites. As an example, PetroCom stated its intention to place sites on drilling platforms that move from place to place to explore for oil.⁴⁵

³⁹ *Id.*

⁴⁰ RVC Services Comments at 1-2.

⁴¹ *Id.* at 11.

⁴² *Id.* at 22-23.

⁴³ Comments of Petroleum Comms., Inc., to the *Further Notice of Proposed Rule Making*, CC Docket 90-6, p. 9 (January 16, 1992).

⁴⁴ Petroleum Comms. Comments at 3, 11-13.

⁴⁵ Petroleum Comms. Comments at 11.

20. Unserved Area Second Report and Order.⁴⁶ In the *Unserved Area Second Report & Order*, adopted in March, 1992, we amended our rules, *inter alia*, to redefine the CGSAs of all cellular licensees in the MSAs and RSAs to resemble actual service areas more closely. We established a service area boundary (SAB) for cells that is calculated using the actual technical parameters of the cell with a mathematical formula.⁴⁷ We deferred action on the alternative proposal for Gulf licensees, in order to permit those licensees additional time to study propagation characteristics in the Gulf.⁴⁸

21. Unserved Area Third Report and Order. In the *Unserved Area Third Report and Order*, adopted in October 1992, we amended our rules, *inter alia*, to make the CGSAs of the Gulf carriers coterminous with their service area boundaries.⁴⁹ We also concluded that PetroCom's technical exhibit provided a convincing demonstration of the service range of typical cellular facilities in the Gulf of Mexico and adopted PetroCom's proposed mathematical formula defining service area boundaries over water.⁵⁰ To avoid unnecessary complexity in our application processing, we decided to apply the water-based formula only to systems authorized to serve the GMSA, and the land-based formula to land-based systems, regardless of whether signals extended over land, water, or some combination thereof. Furthermore, because the Gulf carriers' CGSA would now be determined by the new water-based formula, we dismissed PetroCom's pending application to designate the entire GMSA as its protected service area.⁵¹

⁴⁶ In the *First Report and Order and Memorandum Opinion and Order*, we adopted rules for the filing, processing and selection of applications for unserved areas. *Unserved Area First Report and Order*, 6 FCC Rcd. 6185. Those rules are not at issue here.

⁴⁷ *In re Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules*, CC Docket 90-6, *Second Report and Order*, 7 FCC Rcd. 2449, 2452-2456, ¶¶ 8-13 (1992) (*Unserved Area Second Report and Order*), modified, 8 FCC Rcd. 1363 (1993) (*Unserved Area Memorandum Opinion and Order on Reconsideration*), appeal denied *sub nom.* Committee for Effective Cellular Rules v. FCC, 53 F.3d 1309 (D.C. Cir. 1995), 47 C.F.R. § 22.911 (1995), formerly 47 C.F.R. § 22.903 (1994).

⁴⁸ *Unserved Area Second Report and Order*, 7 FCC Rcd. at 2452 n.12.

⁴⁹ *In re Amendment of Part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules*, CC Docket 90-6, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd. 7183, 7184, ¶ 9 (1992) (*Unserved Area Third Report and Order*). See 7 FCC Rcd. at 7193, Appendix B; 47 C.F.R. § 22.903(a)(2). We also made other rule changes which are not relevant to the issues at hand and acted on petitions for reconsideration of actions taken in its *First Report and Order*. *Unserved Area Third Report and Order*, 7 FCC Rcd. at 7185-7190, ¶¶ 13-44.

⁵⁰ *Unserved Area Third Report and Order*, 7 FCC Rcd. at 7184, ¶ 6.

⁵¹ *Id.* at ¶ 9. We note that the Court of Appeals vacated our decision to determine the CGSAs of the Gulf carriers by the new formula and, therefore, PetroCom's application was reinstated pending resolution of this rulemaking proceeding.

Finally, we stated that the land-based transmitter issue was outside of the scope of the *Unserved Area* proceeding and, therefore, declined to address that issue.⁵²

22. On December 23, 1992, we issued a public notice announcing the dates for filing unserved area applications in the GMSA. In response, we received fifteen Phase II applications to provide service to unserved areas in the Gulf.

C. Judicial Review

23. In December 1992, both Gulf carriers filed petitions for review with the United States Court of Appeals for the District of Columbia Circuit challenging several of our rules that were adopted in CC Docket No. 90-6.⁵³ They argued, *inter alia*, that we acted arbitrarily and capriciously by not allowing water-based operators to define their CGSAs with flexible boundaries.⁵⁴ More specifically, they asserted that former Section 22.903(a) of the Commission's rules -- which defines CGSA boundaries as coterminous with areas of actual coverage -- does not take into consideration the unique operating circumstances facing GMSA licensees.⁵⁵

24. On May 13, 1994, the court instructed us to vacate Section 22.903(a) of our rules insofar as it applies to GMSA licensees, and suggested that we reconsider our decision to define the CGSAs of Gulf licensees by a fixed rather than a flexible boundary.⁵⁶ The court agreed with the Gulf carriers that, when adopting our new rules, we had not considered the unique circumstances surrounding provision of cellular service in the Gulf, which appear to warrant a

⁵² In its comments, PetroCom conceded that the construction of Gulf transmitters on land might be outside the scope of the 90-6 proceeding and, therefore, requested that we initiate a separate rulemaking proceeding. *Petroleum Comms. Comments* at 10 n.11.

⁵³ The court consolidated the petitions for review on February 13, 1993.

⁵⁴ Brief for Petitioners at 46-47. In addition, the Gulf carriers asserted that we promulgated a consent requirement for *de minimis* extensions under Section 22.903(d)(1) without providing proper notice and opportunity for comment as required under the Administrative Procedure Act (APA), 5 U.S.C. § 553. The Commission rejected these arguments, and concluded that adequate notice was given for the changes to Section 22.903(d)(1) made in the *Third Report and Order*, and that those changes were well grounded in previous Commission rules and policies, and that the changes were a logical outgrowth of the issues raised in that proceeding. See, *In the Matter of Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular service and to Modify Other Cellular Rules*, CC Docket No.90-6, *Further Memorandum Opinion and Order on Reconsideration*, (1996) (1996 *Unserved Area Order*) at ¶¶ 11-20. The Gulf carriers also argued that, to the extent that the consent requirement is a clarification rather than a new rule, it has been imposed in a discriminatory fashion to petitioners' detriment. To support their assertions, the Gulf carriers focused the court's attention on several applications for review pending with the Commission. Because these are adjudicatory matters, we will address these issues in separate orders, which will be released simultaneously with the Report and Order in this rulemaking proceeding.

⁵⁵ Brief for Petitioners at 47.

⁵⁶ *Petroleum Comms.*, 22 F.3d at 1173.

more flexible CGSA definition than the definition adopted for land-based licensees.⁵⁷ At a minimum, the court instructed us "to develop a [more] convincing rationale for applying a uniform standard to water-based and land-based licensees" if the decision is made to continue to apply the existing policy.⁵⁸

25. In response to the court's instructions, we vacated Section 22.903(a) of our rules (since redesignated as Section 22.911) insofar as it applies to GMSA licensees.⁵⁹ At the present time, there is a note following Section 22.911 that reads:

NOTE: On May 13, 1994, the United States Court of Appeals for the District of Columbia Circuit instructed the FCC to vacate the provisions of old § 22.903(a), now § 22.911(a), insofar as they apply to cellular systems licensed to serve the Gulf of Mexico MSA (GMSA), pending reconsideration of an issue remanded to the FCC in that decision. See *Petroleum Communications, Inc. v. Federal Communications Commission*, No. 92-1670 and *RVC Services, Inc., D/B/A Coastal Communications Co. v. Federal Communications Commission*, No. 93-1016, 22 F.3d 1164, 1173 (D.C. Cir. 1994). Accordingly, notwithstanding the provisions of § 22.911(a), until further notice, the authorized CGSAs of the cellular systems licensed to serve the GMSA are those which were authorized prior to January 11, 1993.

In this *Second Further Notice*, we address the issues raised by the court.

D. Current Status of Applications

26. In accordance with the court's directive, we reinstated Coastel's CGSA as the entire GMSA, and PetroCom's CGSA as the western portion of the GMSA. PetroCom's application to define its CGSA as the entire GMSA has been placed on hold pending resolution of this proceeding. The following types of applications have also been placed on hold pending resolution of this proceeding:

- Phase II unserved area applications to serve the GMSA
- Applications filed by land-based carriers for de minimis extensions into the GMSA.

Furthermore, we have continued to deny applications filed by Gulf carriers to place transmitters on land without the land-based carrier's consent. In short, most applications to serve the coastal

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Rewrite of Part 22 of the FCC Rules, Commercial Radio Division, Wireless Telecommunications Bureau, January 2, 1995. 47 C.F.R. § 22.911(a) (1995).

areas have been placed on hold or dismissed as the combined result of our existing policies and the court's directive. Consequently, the public is not receiving reliable service in some coastal areas. In the following section, we propose a comprehensive licensing scheme that will enable us to start processing applications to serve these areas and to resolve some of the conflicts that have arisen between the land-based and water-based carriers.

III. DISCUSSION

A. Overview

27. In this *Second Further Notice*, we propose new rules to govern cellular service in the GMSA, and we solicit comment from the public on our proposed rule changes. As stated above, we propose to divide the Gulf into a GMSA Exclusive Zone and a GMSA Coastal Zone. We tentatively conclude that a separate GMSA Coastal Zone will serve the public interest, because the higher volume of cellular traffic in coastal waters justifies a policy that ensures wide-spread, reliable coverage along the shoreline. To ensure seamless coverage, we tentatively conclude that both land-based and water-based carriers should be permitted to provide service to traffic travelling in coastal waters, because different parts of the coast may be more conducive to coverage from one type of carrier than another (*e.g.*, because of varieties in terrain, zoning laws that prohibit offshore oil and gas platforms). Moreover, both types of carriers currently provide coverage to coastal waters, and we tentatively conclude that those sites should not be disturbed. Finally, we propose that, to the extent that two or more carriers desire to serve the same coastal waters, the authorization for that area should be awarded through the competitive bidding process to the carrier that values it the most. We seek comment on our proposals, which are discussed in more detail below.

28. We also tentatively conclude that a GMSA Exclusive Zone should be created within which the existing Gulf carriers may move their transmitters freely and expand or modify their systems without being required to file applications or obtain prior approval. Under this proposal, we would not accept applications for Gulf systems from anyone other than the two original Gulf carriers, except in the case of assignment or contract extension.⁶⁰ The exclusivity will extend for the license term and can be renewed.⁶¹ We believe that creating the Exclusive Zone addresses the court's concern that Gulf carriers be granted a certain amount of flexibility with respect to their service areas in light of the unique challenges associated with providing service in the Gulf.⁶² Furthermore, we tentatively conclude that the Exclusive Zone serves the public interest, because it will reduce the administrative burden on the Commission and on Gulf carriers associated with relocation of their water-based transmitters.

⁶⁰ While we do not intend to license other cellular carriers in the GMSA, in Section III (C), *supra*, we seek comment on whether we should adopt licensing and operational rules for non-cellular CMRS in the Gulf region, such as PCS and SMR.

⁶¹ The practical effect of this is that the Exclusive Zone will have a build-out period with no expiration.

⁶² *Petroleum Comms.*, 22 F.3d at 1173.

B. The GMSA Coastal Zone

1. Defining the Boundary

29. As stated above, we tentatively conclude that coastal waters should be licensed and regulated differently than the rest of the GMSA, because cellular traffic to and from boats is heavily concentrated in coastal waters.⁶³ Assuming the establishment of a Coastal Zone serves the public interest, we propose to consider several criteria when determining the optimal size and parameters for such a zone.

30. First, we tentatively conclude that the boundary should be far enough from the shoreline to encompass the majority of coastal boat traffic, so that such traffic is capable of receiving reliable cellular service at all times. Therefore, those boats that wish to remain in constant contact with people on the shore (*e.g.*, for safety or other reasons), could plan their itineraries in such a way that they stay within the designated Coastal Zone. We request commenters to provide empirical data on the types of boats that travel exclusively in coastal waters and the average number of miles from shore that such boats travel.

31. Second, we tentatively conclude that the boundary of the Coastal Zone should be close enough to shore so that all areas within the Coastal Zone are capable of receiving service from land-based transmitters when water-based options are unavailable. This proximity to land is desirable so that, when a water-based transmitter providing coverage to a particular area is moved (*e.g.*, because an oil platform is removed), a land-based transmitter can be erected to provide reliable coverage to the vacated area. We request information on the approximate distance, in kilometers, from shore over which a land-based transmitter is capable of providing reliable coverage. We also seek comment on any other criteria that should be considered when determining the optimal size for a Coastal Zone.

32. Considering the above criteria, we tentatively conclude that the territorial waters of the United States -- which is a maritime zone that extends approximately twelve nautical miles from the U.S. baseline -- would constitute an appropriate GMSA Coastal Zone.⁶⁴ We have attached a map in Appendix A depicting coordinates that closely approximate this maritime zone. We propose to define the Coastal Zone by a specified set of coordinates (rather than solely by distance) for purposes of administrative efficiency. We believe that specifying coordinates will assist us in determining whether a particular transmitter or contour is located inside or outside of the Coastal Zone, and therefore reduce the number of disputes that might otherwise arise. We

⁶³ Petroleum Comms. Comments at 8. GTE has challenged this conclusion, claiming that it lacks "factual evidence." See GTE Opposition to Petition to Deny, File No. 00199-CL-MP-91, at 7 (Aug. 29, 1991). We have relied on Coastel's argument that the majority of traffic in the Gulf is in the area closest to the shore. See, Coastel Comments, p.8 n.8.

⁶⁴ Proclamation No. 5928, 54 Fed. Reg. 777 (1988). One U.S. nautical mile is equal to 6080 feet, or 1.853 kilometers.

seek comment on whether all of the area encompassed within the proposed GMSA Coastal Zone is capable of receiving reliable cellular coverage, and on the extent to which coastal boat traffic is encompassed within this zone.

33. Alternatively, we seek comment on whether a non-uniform boundary (*e.g.*, a boundary that is closer to the shore in some points and farther out in others) should be adopted for the GMSA Coastal Zone. A non-uniform boundary could be established to reflect such factors as the existence of coastal islands, the volume and traffic patterns of leisure boats, irregularities in terrain, and restrictions on off-shore drilling.⁶⁵ For example, the boundary could extend farther from the shore in densely populated areas to accommodate heavy leisure boat traffic and closer to the shore in areas that consist primarily of undeveloped wetlands. A non-uniform boundary could also be established that takes into account the location of existing oil platforms and, hence, potential water-based transmitter locations. Thus, as illustrated in Appendix A, the boundary would be closer to the shore off the coast of Texas, where many oil platforms are located, and farther away from the shore off the coast of Florida, where drilling for oil is not permitted.⁶⁶ We request comment on the coordinates listed in Appendix A, and on the advantages and disadvantages of adopting a uniform versus a nonuniform boundary. We also encourage commenters to submit any alternative coordinates, supported by a rational basis for adopting them.

34. In addition, we request comment on other factors that should be considered when determining whether a Coastal Zone should be established and what the boundary of such a zone should be. For instance, the Gulf carriers have acknowledged that their fees are typically higher than fees charged by land-based carriers because of the added expense of operating water-based transmitters, which are significantly more expensive to access and maintain.⁶⁷ Therefore, we seek comment on whether the fact that boat travellers would be required to incur higher roaming fees from carriers licensed to provide service to fixed and temporary fixed platforms, drilling rigs, and mobile units on board vessels should be a factor to consider in determining the parameters of the Coastal and Exclusive Zones. We invite discussion on our proposals and any alternatives.

2. Treatment of Incumbents

35. An important issue associated with our proposal is its potential impact on existing sites that have been authorized within the area that is ultimately designated as the GMSA Coastal Zone. Existing sites are of two varieties: (1) water-based sites operated by Gulf carriers in coastal waters, or (2) *de minimis* extensions into the GMSA granted to land-based carriers with service areas that border the GMSA. Prior to the *PetroCom* decision, we granted numerous *de minimis* extension requests by land-based carriers, primarily in coastal areas that could not be reached by water-based transmitters. Under Section 22.911(c)(2) of the Commission's rules, *de*

⁶⁵ Fla. Stat. ch. 377.242(1)(a)(5)(1995).

⁶⁶ *Id.*

⁶⁷ RVC Services Comments at 7; Petroleum Comms. Comments at 7-8, ¶ 9.

minimis extensions are incorporated into the CGSA of the cellular carrier that is providing service to the area once the Phase I buildout period has expired provided that they file a System Information Update (SIU) for the market into which it extends.⁶⁸ Thus, unless we change the rule for the GMSA, the *de minimis* extensions into the GMSA that have been granted to land-based carriers would become part of the CGSA of the associated land-based carrier.

36. We tentatively conclude that the public interest is best served by allowing all water-based and land-based service area boundaries that extend into the Coastal Zone to be incorporated into the CGSA of the carrier currently providing service, provided that the authorizations were properly granted in accordance with the cellular rules in effect at the time of the grant.⁶⁹ This proposal is consistent with our unserved area rules. It will also enable subscribers to continue to receive uninterrupted cellular service from their current provider. In addition, we tentatively conclude that our proposal serves the public interest, because it will encourage cellular carriers to concentrate resources on providing service to unserved areas rather than constructing additional or redundant transmitters in those areas already receiving service. The remaining unserved areas would be subject to the our Phase II *Unserved Area* rules as described in Section III(B)(5), *infra*. We seek comment on our proposal and any alternatives. Specifically, we request commenters to address the advantages and disadvantages of allowing existing authorizations to continue operation versus requiring all carriers to "pull back" any SABs that extend into the Coastal Zone.

3. Propagation Formulas

37. Another issue that has received repeated attention is the calculation of service contours that extend partially over water and partially over land. Our goal throughout the *Unserved Area* proceeding has been to adopt formulas for calculating SABs that reflect reliable service coverage. In the *Unserved Area Third Report and Order*, we adopted a GMSA formula based on measurement data submitted by PetroCom, because the formula takes into consideration the propagation characteristics over water and, therefore, we believe more accurately represents coverage in the Gulf.⁷⁰ For purposes of administrative efficiency, however, we declined to use the water-based formula to determine coverage by land-based systems with contours that extend partially over water.⁷¹ Similarly, we determined that it would be simpler to use the water-based formula to measure coverage from Gulf-carrier transmitters, even if such contours extend partially over land.⁷² The Gulf carriers maintain, however, that it is inaccurate to measure a contour that

⁶⁸ 47 C.F.R. § 22.911(c)(2) (1995).

⁶⁹ Coastal has challenged a number of *de minimis* extension applications that were granted to land-based carriers. Because the grant of such applications must be reviewed on a case-by-case basis, separate orders shall be issued with respect to all challenges to *de minimis* extensions into the GMSA.

⁷⁰ *Unserved Area Third Report and Order*, 7 FCC Rcd. at 7184, ¶ 6.

⁷¹ *Id.*

⁷² *Id.* at ¶ 11.

extends over water by the land-based formula, simply because the transmitter is owned and operated by a land-based carrier.⁷³ They argue that, to do so, underestimates the actual size of the extension, because signals are attenuated less over water.

38. Because the Coastal Zone would be a unique "hybrid" area that is capable of receiving service from either a land-based or water-based carrier, we tentatively conclude that the same formula should apply to all contours within the Coastal Zone, regardless of whether the transmitter is owned and operated by a land-based or water-based carrier. We therefore reconsider our earlier decision in the *Unserved Area Third Report and Order* and seek comment on whether a hybrid formula should be adopted for determining reliable coverage for signals that extend partially over water and partially over land as occurs in the coastal areas of the Gulf of Mexico. In particular, we request commenters to submit specific formulas that would adequately reflect the reliable service area of such combination land-water transmitters. We also seek comment on whether it would be more appropriate to employ a case-by-case approach, using the GMSA formula as a starting point.⁷⁴ We invite discussion on these alternatives and on other methods that could be used to calculate such contours.

4. Placement of Transmitters

39. Under our 1986 policy discussed in Section II, *supra*, applications by Gulf carriers to place transmitters on land without the consent of the land-based carrier were denied. This policy was established in order to give RSA licensees an opportunity to build out their systems without regard for potential interference from Gulf carriers.⁷⁵ Although the Gulf carriers argued that this policy prevented them from providing coverage to some water areas, we concluded that the rights of future RSA licensees should be protected.⁷⁶

40. Since 1986, cellular service in the Gulf region has matured, and RSA licensees have built out their systems to such an extent that nearly the entire coastal area of the Gulf region is within the CGSA of land-based carriers. We therefore propose to abandon the policy of absolutely prohibiting (without consent) land-based sites for the GMSA carriers, and to provide

⁷³ See, e.g., RVC Services Comments at 4; Petroleum Comms. Comments at 14.

⁷⁴ Rochester Telephone Mobile Communications suggested this approach in response to the *Unserved Area Further Notice*. See Comments of Rochester, *Unserved Area Third Report and Order*, 7 FCC Rcd. at 7184, ¶ 10. We declined to adopt this approach with respect to non-Gulf coastal areas (e.g., the Great Lakes) to avoid unnecessary complexity in our application processing. *Id.* at 7185, ¶ 11.

⁷⁵ 1986 *Unserved Area Order*, 1 FCC Rcd. at 511, ¶ 5. We used the same method of calculating the Gulf licensees' 39 dBu contours as is used for land-based systems because it was the only method of propagation readily available to the public and standardized throughout the country. However, we recognized that the method probably underestimated actual signal propagation over extensive water areas. *Id.* at 516 n.16. We subsequently changed this formula for water-based carriers. See 47 C.F.R. § 22.911(a)(2).

⁷⁶ *Id.* at 513, ¶¶ 19-20.

that only our SAB extension rules⁷⁷ should affect the placement of transmitters, whether land-based or water-based.⁷⁸ We tentatively conclude that our proposal serves the public interest, because it removes an obsolete constraint on the placement of transmitters by water-based carriers on land. Land-based carriers, we note, will still be permitted to erect transmitters on platforms in the water to cover Coastal Zone areas licensed to them, if it is more economical or otherwise efficient to do so. Despite this new flexibility, we reiterate that both types of carriers would continue to be subject to our SAB extension rules. We seek comment on whether this proposal strikes a proper balance between the interests of land-based and water-based licensees.

5. Pending Applications

a. Mutually Exclusive Applications

41. As stated above, we propose that portions of the Coastal Zone that do not currently receive cellular service be treated as "unserved areas" for purposes of our cellular rules.⁷⁹ Because the five-year build-out period has expired for all carriers with service areas that abut the proposed Coastal Zone, we tentatively conclude that we should move directly to Phase II licensing procedures. We therefore propose to accept applications pursuant to our current Phase II rules. Any Phase II applications previously filed to serve any Coastal Zone areas would be dismissed without prejudice, as discussed in further detail in Section III(D)(2), *infra*, and may be resubmitted sixty days after the effective date of this rulemaking. We propose to use competitive bidding procedures to select from among mutually exclusive applications,⁸⁰ if any, pursuant to Sections 22.131 and 1.2101-1.2111 of our rules.⁸¹ We seek comment on our proposal and any alternatives.

b. Construction Requirements

42. A major goal with respect to our Coastal Zone proposal is to ensure that boats travelling within the Coastal Zone are capable of receiving reliable cellular service. We therefore tentatively conclude that carriers that obtain licenses to serve areas in the GMSA Coastal Zone should be required to comply with Section 22.946 of our rules,⁸² which requires all cellular

⁷⁷ See 47 C.F.R. § 22.912.

⁷⁸ Note that all cellular licensees are entitled to enter into contracts with the licensees of other cellular systems on the same channel block to allow SABs to overlap CGSAs. 47 C.F.R. § 22.911(d)(2) (1995).

⁷⁹ See 47 C.F.R. § 22.949.

⁸⁰ See 47 C.F.R. 22.949(b)(2). Phase II application are mutually exclusive only if the proposed CGSA's would overlap.

⁸¹ 47 C.F.R. §§ 22.131 (1995), 1.2101-1.2111 (1994).

⁸² 47 C.F.R. § 22.946 (1994).

licensees to construct and to provide service to the licensed area within one year.⁸³ This proposal is consistent with our tentative conclusion that the Coastal Zone should be treated in the same manner as terrestrial unserved areas. We seek comment on the application of our coverage requirements, including any factors that may suggest a more liberal build-out policy for these areas.

c. CGSA Boundaries

43. As discussed in Section III(B)(2), *supra*, we propose that areas currently receiving service within the Coastal Zone should become part of the associated carrier's CGSA. As a corollary, we propose that the CGSA of a carrier that discontinues service within the Coastal Zone should be reduced to reflect the actual reliable service area of that carrier. Moreover, we tentatively conclude that the vacated area should be made available for relicensing in accordance with our *Unserved Area* rules.

44. Again, our proposal is consistent with our tentative conclusion that unserved areas within the Coastal Zone should be treated in the same manner as land-based unserved areas. We recognize that our proposal may impose some hardship on licensees with transmitters on temporary platforms that are relocated due to no fault of their own; however, we tentatively conclude that the public interest in ensuring reliable cellular service throughout the Coastal Zone outweighs any hardship these carriers may experience. Furthermore, if we allow all carriers to place transmitters on shore as proposed in Section III(B)(4), *supra*, even a Gulf carrier providing service to the Coastal Zone might be able to provide coverage to the vacated area by placing a transmitter on land. We request comment on our proposal and any alternatives.

d. Contour Extensions

45. As discussed in Section III(C)(3), *infra*, we propose to treat SAB extensions into the GMSA Exclusive Zone in the same manner as extensions into other cellular service areas pursuant to Section 22.912 of our rules.⁸⁴ Specifically, we propose to modify the definition of SAB extensions to include those that cross the boundary between the Coastal Zone and Exclusive Zone. We seek comment on our proposal and any alternative.

C. The GMSA Exclusive Zone

46. We tentatively conclude that the GMSA Exclusive Zone should consist of the body of water that extends from the Coastal Zone (proposed parameters are discussed in Section

⁸³ 47 C.F.R. § 22.946(b) (1995).

⁸⁴ 47 C.F.R. § 22.912(a) (1995).

III(B)(1), *supra*, to the southernmost boundary of the GMSA.⁸⁵ Within this area, the Gulf carriers would be permitted to expand without facing competing applications and without being required to seek approval for new sites before commencing operations. We believe that a GMSA Exclusive Zone takes into consideration the unique circumstances of the Gulf carriers, who locate their transmitters primarily on oil or gas company platforms that are moved according to business decisions made by the companies that own the platforms.⁸⁶ We seek comment on the desirability of establishing such a zone, which would reduce the administrative burden on Gulf carriers that are continually required to expand and contract their service areas.

1. The CGSAs of Gulf Carriers

47. We tentatively conclude that the CGSA of the Gulf carriers should be the area for which they currently provide reliable service as determined by using the method in Section 22.911(a)(2) of our rules.⁸⁷ We propose that the Gulf carriers should be required to notify us of the new boundaries of their CGSA as changes in their service area occur by filing a Form 489 notification within 15 days of the modification.⁸⁸ We tentatively conclude that, by making the Gulf carriers' CGSA coterminous to their service areas, we will be better able to monitor the areas of the Gulf that are actually receiving cellular service.

48. We note that we previously adopted a similar rule -- earlier Section 22.903(a), which was later redesignated as Section 22.911(a) -- that made the CGSA of all cellular licensees coterminous with their service areas, and that the Court of Appeals instructed us to vacate this rule insofar as it applies to Gulf licensees.⁸⁹ Specifically the court was concerned that Gulf service areas should not be "frozen" at their current dimensions.⁹⁰ In its opinion, the Court of Appeals stated that:

We do not foreclose the possibility that the Commission may develop a convincing rationale for applying a uniform standard to water-based and land-based licensees. We state simply that, after considering the record before us, we

⁸⁵ See Presidential Proclamation Number 5030, 48 Fed. Reg. 10605, 1983 WL 85299 (Pres.). In 1983, President Ronald Reagan issued a proclamation defining the Exclusive Economic Zone ("EEZ") as that area which extends 200 nautical miles from the baseline from which the territorial sea is measured. The proclamation further states that the United States has sovereign rights within the EEZ "for the purposes of exploring, exploiting, conserving, and managing natural resources . . . and, jurisdiction with regard to the establishment and use of the artificial islands, and installations and structures having economic purposes . . ." *Id.*

⁸⁶ See RVC Services Comments at 7.

⁸⁷ 47 C.F.R. § 22.911(a)(2) (1995), formerly 47 C.F.R. § 22.903(a)(2) (1994).

⁸⁸ 47 C.F.R. §§ 22.163(e), 22.947(a) (1995).

⁸⁹ *Petroleum Comms.*, 22 F.3d at 1173.

⁹⁰ *Id.*

remain unpersuaded that the Commission has given due weight to factors bearing sharply on the wisdom or fairness of such a uniform standard.⁹¹

49. Our current proposal differs significantly from the way that Section 22.903(a) was initially applied to Gulf carriers before that rule was vacated. Under the new proposal, the information reported to the Commission would be used solely for monitoring purposes. Thus, the Gulf carriers would have much more flexibility than before, because they would be permitted to expand and contract their systems within the GMSA Exclusive Zone without prior Commission approval. The Gulf carriers would only be required to notify the Commission of new boundaries instead of filing major applications. Under the vacated rule, the Gulf carriers would not have been permitted to expand or change beyond their CGSA (*i.e.*, actual service area) without facing competing applications. We tentatively conclude that our current proposal addresses the court's concerns, because it takes into account the unique operating conditions of a water-based system by providing the Gulf carriers with much more flexibility. We request comment on our proposal and any alternatives.

3. Extensions into the GMSA Exclusive Zone

50. We tentatively conclude that *de minimis* extensions into unserved areas in the GMSA Exclusive Zone should be permitted, because carriers licensed to cover the GMSA Coastal Zone may need to extend into the GMSA Exclusive Zone by a small amount in order to provide reliable coverage to the area for which they have received a license. To protect the interests of the GMSA Exclusive Zone licensees, however, we propose that all *de minimis* extensions into the Exclusive Zone must meet the criteria set forth in Section 22.912(a) of our rules.⁹² Gulf carriers will not be harmed by such extensions, because no incursions into their CGSAs will be permitted without their consent.

51. Although we tentatively conclude that only the Gulf carriers should have exclusive rights to expand or relocate within the GMSA Exclusive Zone, we propose that contract extensions should be permitted if consent is obtained from the appropriate Gulf carrier. Thus, if a Gulf carrier does not intend to serve a portion of the GMSA Exclusive Zone, the Gulf carrier would be permitted to enter into a contract with another carrier that desires to provide such service.⁹³ We request discussion on our proposal.

D. Licensing Issues

1. Interim Licensing

⁹¹ *Id.*

⁹² 47 C.F.R. § 22.912(a).

⁹³ *See*, 47 C.F.R. §§ 22.912(b) and (c).

52. While this rulemaking proceeding is pending, we propose to continue to hold all applications by land-based carriers for extensions, including *de minimis* extensions, into the GMSA.

2. Pending Applications

a. Phase II Applications

53. As discussed in Section II(D), *supra*, many applicants filed Phase II applications pursuant to our December 23, 1992, public notice announcing dates for filing unserved area applications for the GMSA. Because the court instructed us to vacate Section 22.903(a) of our rules insofar as it applies to Gulf licensees -- which reinstated the entire GMSA as Coastal CGSA and the western portion as PetroCom's CGSA -- we have placed all Phase II applications on hold pending reconsideration of our policies in the Gulf.

54. Once final rules are adopted, we propose to dismiss without prejudice all pending Phase II applications to serve areas within the Coastal Zone. On the date that the new rules are adopted, applicants will be permitted to file (or resubmit if appropriate) applications to serve areas within the newly established GMSA Coastal Zone. Any mutually exclusive applications received within the requisite thirty-day notice and cut-off period would be subject to competitive bidding procedures under Section 22.131 of our rules.⁹⁴

b. Applications for *De Minimis* Extensions into the Gulf

55. As discussed in Section III(B)(5), *supra*, we propose to dismiss all pending applications for *de minimis* extensions into the GMSA as of the effective date of the final rules adopted in this proceeding. With few exceptions, all land-based carrier applications for sites with contours that extend into the GMSA, and all water-based carrier applications for sites that extend onto land, have been the subject of petitions to deny and applications for review. In addition, all applications filed by land-based carriers for *de minimis* extensions into the GMSA have been on hold since the court vacated Section 22.903(a) of our rules insofar as it applies to Gulf carriers. We have not been able to grant these applications until we determined the boundary of the Gulf carriers' CGSA.

56. Because we are reconsidering our policies in the Gulf, and in the interest of avoiding the appearance of prejudging the issues raised therein, we tentatively conclude that it would be inequitable to grant pending applications for *de minimis* extensions into the GMSA that have been submitted by land-based carriers. We also tentatively conclude that no injustice will result from the dismissal of these applications, because the land-based carriers will have the opportunity to resubmit unserved area applications to provide service to these areas, as discussed further in Section III(B)(5), *supra*. We seek comment on our proposal and any alternatives.

⁹⁴ Phase II rules provide that applications are mutually exclusive if timely filed and CGSAs overlap. See 47 C.F.R. 22.949(b)(2).

c. Applications filed by Gulf Carriers for Land-Based Transmitters

57. In conformance with the policies outlined in Section III(B)(4), *supra*, we have continued to deny all applications submitted by Gulf carriers to place transmitters on land without the land-based carrier's consent. Now pending before us are 11 Applications for Review filed by Coastel requesting that the Commission reconsider its denial of Coastel's applications for land-based facilities. Separate orders will be drafted for each Application for Review, which will be released simultaneously with the final *Order* in this rulemaking proceeding.

E. Other Commercial Mobile Radio Services in the Gulf of Mexico

58. In addition to our proposals for cellular service in the Gulf, we seek comment on whether to authorize other CMRS providers to provide service in the Gulf. Although we have previously licensed some SMR facilities in the Gulf on a site-by-site basis, we have not extended our geographic area licensing rules in services such as PCS and SMR to Gulf operations. We therefore request comment on whether we should adopt licensing and operational rules for non-cellular CMRS in the Gulf region.

1. PCS

59. Broadband PCS service areas are licensed as Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs").⁹⁵ These MTAs and BTAs are based on the Rand McNally *Commercial Atlas and Marketing Guide*, 123rd Edition, and represent an organization of the 50 States and the District of Columbia.⁹⁶ Certain U.S. Territories, not included in this organization, are licensed as MTA-like and BTA-like areas.⁹⁷ Construction requirements for broadband PCS licensees are based on coverage of population over a five or ten year period, depending on the size of the spectrum block.⁹⁸ Narrowband PCS service areas are licensed as nationwide and regional MTAs and BTAs.⁹⁹ Construction requirements for narrowband PCS differ for nationwide and regional licensees, but may be satisfied by meeting either geographic or population based coverage requirements over a ten-year period.¹⁰⁰

60. At this point, no provision has been made for the licensing of broadband or narrowband PCS in the Gulf. We request comment on whether sufficient demand exists to justify

⁹⁵ See, 47 C.F.R. § 24.202 (1995).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See, 47 C.F.R. § 24.203 (1995).

⁹⁹ See, 47 C.F.R. § 24.102 (1995).

¹⁰⁰ See, 47 C.F.R. 24.103 (1995).

an extension of broadband and narrowband PCS services into the Gulf of Mexico. Should sufficient demand exist to warrant a consideration of expanding PCS into the Gulf, we would request comment on how potential service areas should be defined. Such comments should address whether the Gulf should be defined as an MTA or BTA, and whether the two-zone approach discussed in this *Second Further Notice* should be extended to PCS. Commenters should also address service and coverage requirements, as well as interference standards, that recognize the differences between terrestrial PCS and potential water-based systems.

2. SMR

61. Historically, we have licensed SMR on a site-by-site basis, and there are SMR licensees currently operating at individually licensed sites in the Gulf. We have also recently adopted geographical area licensing rules for 900 MHz SMR and have adopted and proposed rules for geographic licensing of 800 MHz SMR. Our 900 MHz SMR rules divide the 896-901/935-940 MHz band into twenty 10-channel blocks in each of 51 service areas based on Major Trading Areas ("MTAs").¹⁰¹ In the 800 MHz band (816-821/861-866 MHz) we have adopted geographic licensing based on U.S. Department of Commerce Bureau of Economic Analysis Economic Areas ("EAs") for the upper 200 channels, and have proposed similar licensing rules for the remaining SMR channels.¹⁰² However, we have not proposed or adopted rules for geographic area licensing in the Gulf in either the 800 MHz or 900 MHz SMR proceedings.

62. We request comment on whether we should extend our geographic area licensing of 800 MHz and 900 MHz SMR to the Gulf of Mexico. If it is determined that geographic area licensing is warranted, we seek comment on how Gulf service areas should be defined, and whether the two-zone approach discussed in this *Second Further Notice* should be extended to potential SMR licensees. In addition, we seek comment on service and coverage requirements, as well as interference standards, that will address the unique conditions of providing water-based service in the Gulf of Mexico. Finally, we note that on February 21, 1997, we received a petition for rulemaking on behalf of PetroCom seeking an amendment to Part 90 of the Commission's rules to provide co-channel interference protection for SMR licenses operating in or near the Gulf.¹⁰³ Specifically, PetroCom argues that SMR providers currently operating in the

¹⁰¹ See In the Matter of Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Implementation of Sections 3(n) and 322 of the Communications Act, PR Docket No. 89-553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639 (1995).

¹⁰² See In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz frequency Band, Implementation of Sections 3(n) and 322 of the Communications Act, regulatory Treatment of Mobile Services, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 1463, 1468, ¶ 1 (1995).

¹⁰³ See Letter from Kenneth W. Burnley, Myers Keller Communications Law Group, to David Furth, FCC, dated February 21, 1997.